

IN THE UTAH COURT OF APPEALS

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Brenda Goodrich,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20050097-CA
v.)	
)	
Division of Child and Family)	F I L E D
Services,)	(September 29, 2005)
)	
Respondent and Appellee.)	2005 UT App 418

Eighth District Juvenile, Roosevelt Department, 446058
The Honorable Larry A. Steele

Attorneys: Brenda Goodrich, Myton, Appellant Pro Se
Mark L. Shurtleff and John M. Peterson, Salt Lake
City, for Appellee

Before Judges Billings, McHugh, and Orme.

PER CURIAM:

Brenda Goodrich appeals the juvenile court's order substantiating the Division of Child and Family Services's (DCFS) supported findings of environmental neglect.

Goodrich first asserts that the trial court erred in substantiating the DCFS findings because environmental neglect is not a severe type of abuse or neglect under Utah Code section 78-3a-320. See Utah Code Ann. § 78-3a-320 (2002) (providing for judicial substantiation of findings of severe neglect). Goodrich interprets this to mean that "substantiated" applies only to severe abuse or neglect, but she is mistaken.

"Substantiated" or "unsubstantiated" indicates a judicial finding regarding abuse or neglect, as opposed to "supported" or "unsupported," which is an agency finding. Under section 62A-4a-101(29), "substantiated" and "substantiation" are defined as "a judicial finding based on a preponderance of evidence that abuse or neglect occurred." Utah Code Ann. § 62A-4a-101(29) (Supp. 2005). "Unsubstantiated" is "a judicial finding that there is insufficient evidence to conclude that abuse or neglect occurred." Id. § 62A-4a-101(34). In contrast, "supported"

means "a finding by the [DCFS] based on the evidence available at the completion of an investigation that there is a reasonable basis to conclude that abuse, neglect, or dependency occurred." Id. § 62A-4a-101(31). Likewise, "unsupported" is an agency finding that there is insufficient evidence to conclude that abuse or neglect occurred. See id. § 62A-4a-101(35). Based on the definitions, the term "substantiated" is appropriately used by a juvenile court to indicate its finding, even where no severe type of abuse is involved.

Goodrich also asserts various errors in the process and reports filed by DCFS regarding the supported findings of environmental neglect, primarily that DCFS did not follow its rules and was not specific enough in its reports to support the findings. However, the proceeding before the juvenile court was a trial de novo regarding the findings, not a review of the informal administrative proceedings. Thus, rather than asserting before the juvenile court that the administrative body erred in its determination, Goodrich had the opportunity to present her entire case and defend against the allegations anew.

Utah Code section 63-46b-15 provides for a trial de novo by the juvenile court where review is sought from "substantiated findings of abuse or neglect made" by DCFS. Utah Code Ann. § 63-46b-15(1)(a)(iii) (2004); see Department of Human Servs. v. B.R., 2002 UT App 25, ¶9, 42 P.3d 390. This section "'establish[es] the right to a new trial without deference to the determinations of an informal administrative proceeding.'" Id. (alteration in original) (quoting Archer v. Board of State Lands & Forestry, 907 P.2d 1142, 1144 (Utah 1995)). The standard of proof for a trial de novo is provided by section 62A-4a-116.5(5)(a): "[T]he division shall have the burden of proving, by a preponderance of the evidence, that there is a reasonable basis to conclude that child abuse, neglect, or dependency occurred and that the alleged perpetrator was substantially responsible for the abuse or neglect that occurred." Utah Code Ann. § 62A-4a-116.5(5)(a) (Supp. 2005); see also B.R., 2002 UT App 25 at ¶12. Thus, if the juvenile court found, by a preponderance of the evidence, that DCFS had a reasonable basis to conclude that the condition of the home constituted environmental neglect and that Goodrich was substantially responsible for the neglect, the juvenile court could properly substantiate the findings.

The evidence at trial showed that the condition of Goodrich's house was below minimum standards and presented health and safety risks to the children. Although Goodrich asserted that DCFS never explained objectively why the home did not meet standards, the pictures themselves, the most compelling evidence, were in the file from the beginning and available to Goodrich. The juvenile court determined that the pictures were sufficient

to document the DCFS findings of environmental neglect. Additionally, the evidence established that Goodrich was substantially responsible for the condition of the home. Thus, the juvenile court properly substantiated the findings of environmental neglect.

Additionally, the caseworkers apparently explained what concerned them in each picture, such as the clutter creating a safety risk of tripping, and the unsanitary conditions creating a risk of disease for the children and the risk of attracting vermin. Although Goodrich asserts this testimony should have been excluded, she provides no legal support for her position. In court proceedings, relevant evidence is generally admissible. See Utah R. Evid. 402. The caseworkers' testimony regarding what they saw and what concerns the photos represented was certainly relevant to the proceeding. Goodrich has not demonstrated that the admission of this evidence was error.

Other errors asserted by Goodrich are, in essence, procedural errors in an administrative proceeding. Goodrich has not shown that these alleged errors have unfairly prejudiced her in any way, however. The trial de novo did not rely on the administrative proceeding. See B.R., 2002 UT App 25 at ¶9. Furthermore, the technical procedural errors asserted by Goodrich were cured by a trial de novo. See Brinkerhoff v. Schwendiman, 790 P.2d 587, 590 (Utah Ct. App. 1990) (finding no prejudice in alleged lack of specific reason for suspension of license because claimant was allowed trial de novo which cured defect, if any). The trial de novo provided Goodrich with the opportunity to present her entire defense anew. See id. As previously indicated, the juvenile court was not reviewing the informal record, but determining the matter on the merits without deference to the administrative proceedings. See Archer, 907 P.2d at 1144-45.

In sum, Goodrich has not shown that the juvenile court erred in substantiating the supported findings of environmental neglect. Accordingly, the juvenile court's order is affirmed.

Judith M. Billings,
Presiding Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge